

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

HOUSTON E. HEDGES, III, PRO SE,
TDCJ-CID No. 1573858,

Plaintiff,

V.

CHRISTINE M. HAGAN, CO IV,

Defendant.

§ § § § §

2:10-CV-0101

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND ORDER OF DISMISSAL

Plaintiff HOUSTON E. HEDGES, III, proceeding pro se and while a prisoner confined in the Texas Department of Criminal Justice, Institutional Division, has filed suit pursuant to Title 42, United States Code, Section 1983 complaining against the above-named defendant, and was granted leave to proceed in accord with Title 28, United States Code, section 1915(b).

On July 20, 2011, the Magistrate Judge issued a Report and Recommendation that defendant's Motion for Summary Judgment be granted and that plaintiff's claims against defendant HAGAN in her official capacity be dismissed without prejudice for want of jurisdiction; and that plaintiff's claims against defendant HAGAN in her individual capacity be dismissed with prejudice as barred for failure to exhaust administrative remedies before filing suit in federal court, 42 U.S.C. §1997e(a); for failure to state a claim of deliberate indifference against defendant HAGAN; and for failure to overcome defendant's entitlement to qualified immunity.

No objections to the July 20, 2011 Report and Recommendation have been filed by either party; and the response period has expired.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation.

The Court is of the opinion that the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge in this case.

IT IS THEREFORE ORDERED that defendant's Motion for Summary Judgment is GRANTED. The Civil Rights Complaint by plaintiff HOUSTON E. HEDGES, III, AGAINST DEFENDANT HAGAN IN HER OFFICIAL CAPACITY IS DISMISSED WITHOUT PREJUDICE FOR WANT OF JURISDICTION; AND PLAINTIFF'S CLAIMS AGAINST DEFENDANT HAGAN IN HER INDIVIDUAL CAPACITY ARE DISMISSED WITH PREJUDICE AS BARRED FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE FILING SUIT IN FEDERAL COURT, 42 U.S.C. §1997e(a)¹; FOR FAILURE TO STATE A CLAIM OF DELIBERATE INDIFFERENCE AGAINST DEFENDANT HAGAN; AND FOR FAILURE TO OVERCOME DEFENDANT'S ENTITLEMENT TO QUALIFIED IMMUNITY.

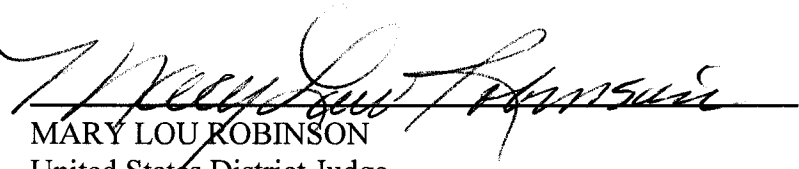
LET JUDGMENT BE ENTERED ACCORDINGLY.

¹The Supreme Court recognized in *Jones* that failure to exhaust administrative remedies is a basis for dismissal for failure to state a claim when that affirmative defense has been asserted by defendants and is properly under court scrutiny. *Jones v. Bock*, 549 U.S. 199, 216, 127 S.Ct. 910, 921, 166 L.Ed.2d 798 (2007) ("As noted, that is not to say that failure to exhaust cannot be a basis for dismissal for failure to state a claim.")

This dismissal counts as a "strike" under the Prison Litigation Reform Act. The Clerk will mail a copy of this Order to the plaintiff, to any attorney of record by first class mail, and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

It is SO ORDERED.

Signed this the 13th day of September, 2011.


MARY LOU ROBINSON
United States District Judge